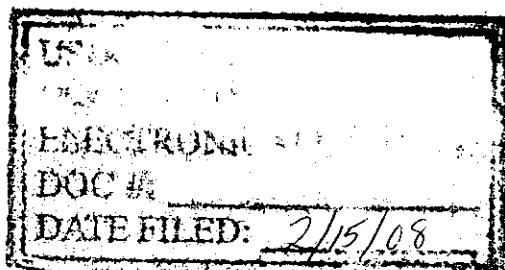


## DISTRICT ATTORNEY

OF THE  
 COUNTY OF NEW YORK  
 ONE HOGAN PLACE  
 New York, N. Y. 10013  
 (212) 335-9000



ROBERT M. MORGENTHAU  
 DISTRICT ATTORNEY



February 15, 2008

BY HAND

Honorable Andrew J. Peck  
 United States Magistrate Judge  
 Southern District of New York  
 United States Courthouse  
 500 Pearl Street, Room 1370  
 New York, New York 10007

**MEMO ENDORSED** *2/15/08*  
**APPROVED.**

SO ORDERED,

*andrew j. peck*  
 Hon. Andrew Jay Peck  
 United States Magistrate Judge

Re: Wells v. Ricks

07 Civ. 6982 (CM) (AJP)

*CM/AS - get court  
 JAP/MH*

**BY FAX**

Your Honor:

Under an agreement with the New York State Attorney General's office, the District Attorney, New York County is representing the interests of the Respondent in the above-captioned matter, a 28 U.S.C. section 2254 proceeding. The District Attorney has already filed its response to Petitioner's habeas corpus petition, and pursuant to a January 23, 2008 order by this Court, a reconstruction hearing will be held on February 21, 2008 at 9:30 a.m. in Courtroom 20D of 500 Pearl Street.

The purpose of this letter is to inform the Court that Petitioner and Respondent have agreed to the following terms and conditions of the reconstruction hearing, subject to Your Honor's approval.

The hearing will proceed as follows. ADA Eric Rosen will call to testify the two prosecutors who conducted Petitioner's 2001 trial in Supreme Court, New York County. ADA Amy Schwartz will testify first, and she will be followed by ADA Bonnie Sard. When each witness is called, Petitioner's counsel will have an opportunity to conduct cross-examination following direct examination. Each party will also then have the opportunity for re-direct and re-cross examination.

DISTRICT ATTORNEY COUNTY OF NEW YORK

Hon. Andrew J. Peck

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February 15, 2008

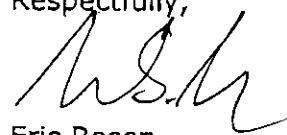
Petitioner's counsel requests the opportunity to call rebuttal witnesses after the prosecution witnesses testify, should that be necessary. The parties also request the opportunity to make brief closing remarks. Lastly, Respondent will provide color copies of ADA Schwartz's and ADA Sard's voir dire notes taken during Petitioner's trial both to the Court and opposing counsel. The parties stipulate to the admission of these notes, as well as the voir dire portion of the trial transcript, into evidence at the hearing.

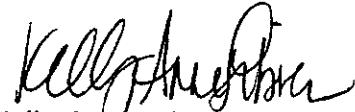
Relatedly, Petitioner's counsel will be responsible for securing Petitioner's presence -- via video link -- at the hearing. If necessary, ADA Rosen will help arrange the video link with Petitioner's prison.

The parties hereby ask this Court to approve the aforementioned terms and conditions of the reconstruction hearing.

I certify that a copy of this letter is being mailed to Judge McMahon, Petitioner, and Petitioner's counsel at the addresses below.

Respectfully,

  
Eric Rosen  
Assistant District Attorney  
(212) 335-9328  
(212) 335-9288 (FAX)

  
Kelly Anne Librera  
DEWEY AND LeBOEUF

cc: Terence Wells

Richard Shutran  
Kelly Anne Librera  
Lisa M. Card  
DEWEY & LEBOEUF LLP  
1301 Avenue of the Americas  
New York, NY 10019

**DISTRICT ATTORNEY COUNTY OF NEW YORK**

**Hon. Andrew J. Peck**

**-3-**

**February 15, 2008**

Honorable Colleen McMahon  
United States District Court Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 640  
New York, New York 10007

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

**Dated: February 15, 2008**

**Total Number of Pages: 4**

TO	FAX NUMBER
Eric Rosen, Esq.	212-335-9288
Kelly Anne Librera, Esq.	212-259-6333
Lisa Marie Card, Esq.	
Richard Shutran, Esq.	
Richard M. Greenberg, Esq.	212-402-4199
Sara Gurwitch, Esq.	

## **TRANSCRIPTION:**

**MEMO ENDORSED 2/15/08**

**Approved.**

**Copy to: Judge Colleen McMahon**